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28236	7590	02/21/2006	EXAMINER	
CRYOVAC, INC. SEALED AIR CORP P.O. BOX 464 DUNCAN, SC 29334			AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/689,146

10/20/03

KENNEDY ET AL.

D-43375-02

EXAMINER

AUGHENBAUGH, WALTER B.

ART UNIT**PAPER**

1772

02172006

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Commissioner for Patents

The information disclosure statement filed January 20, 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because Applicant did not state in the IDS, as required by 37 CFR 1.97(d)(1), either (1) that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or (2) that no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement.

It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/689,146
Filing Date: October 20, 2003
Appellant(s): KENNEDY ET AL.

MAILED
FEB 21 2006
GROUP 1700

Mark B. Quatt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 9, 2005 appealing from the Office action mailed February 3, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. in view of Inoue et al. and in further view of Harvey et al.

In regard to claim 24, Speer et al. teach a multilayer film comprising a first layer comprising an oxygen scavenger layer, an oxygen barrier having an oxygen transmission rate of no more than 25 cc oxygen/m²/24hr and a second layer comprising an adhesive where the adhesive is adhered to the first layer (col. 11, lines 4-11 and 50-62 and col. 12, lines 31-35). Speer et al. teach the multilayer film in the form of a non-integral packaging component such as an adhesive sheet insert (i.e. a patch, col. 4, lines 8-14). Speer et al. teach that adhesive maleic anhydride modified polymers are suitable as the adhesive material (col. 9, lines 11-24).

Speer et al. fail to explicitly teach that the adhesive is a pressure sensitive adhesive and that an oxygen indicator comprising a luminescent compound is disposed on the second layer.

Inoue et al., however, teaches an article comprising both an oxygen indicator and an oxygen scavenger (col. 3, lines 35-41 and col. 4, lines 9-19). The oxygen indicator of Inoue et al. is used to indicate the presence or absence of oxygen based on the color of the indicator (col. 1, lines 15-20 and col. 8, lines 50-64). Inoue et al. teach that the oxygen indicator includes a dyestuff selected from the group consisting of thiazine dyestuffs, indigo dyestuffs and mixtures thereof (col. 1, lines 55-64). Thiazine dyestuffs are luminescent, as evidenced by Miyasaka et al. (enclosed with this Office Action), which discloses that thiazine dyes are suitable light-harvesting dyes (col. 6, lines 23-31), which are defined by Miyasaka et al. as luminescent (col. 4, lines 3-4). Inoue et al. teach that the oxygen indicator composition includes an adhesive binder (col. 3, line 48-col. 4, line 3) and is printed on a substrate such as the inside of a transparent film having an oxygen barrier property (col. 4, lines 9-19). Inoue et al. teach that the oxygen indicator is printed on a film (col. 3, lines 35-41), consequently forming an image. Definition 2(b)(2) of the “print” in the attached definition from Merriam-Webster Online Dictionary is “to impress (a

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pattern or design) on something". Therefore, it is well known to those of ordinary skill in the art that indicators are often printed onto film substrates in a discontinuous manner/pattern as shown by Inoue et al. in order to make use of the indicator in an economical manner. The print pattern of the indicator is a matter of aesthetics and is a choice of the appearance of the final product; there is no criticality to the issue of patentability in regard to the geometry of the indicator print pattern (image). Therefore, one of ordinary skill in the art would have recognized to have printed the indicator layer of Inoue et al. as a printed image on the adhesive layer of Speer et al. in order to utilize the indicator to determine the amount of oxygen that permeates through the barrier layer of Speer et al. to the inside of the article as taught by Inoue et al.

Furthermore, in regard to the "pressure sensitive adhesive" recitation, Harvey et al. disclose a pressure sensitive adhesive that is coated onto polymeric films to form articles such as labels, marking films, etc. (col. 4, line 61-col. 5, line 3). Harvey et al. disclose that the pressure sensitive adhesive comprises maleic anhydride (col. 8, lines 36-49 and 55-59). Therefore, one of ordinary skill in the art would have recognized to have used the pressure sensitive adhesive comprising maleic anhydride taught by Harvey et al. as the maleic anhydride modified polymer adhesive of Speer et al. since the pressure sensitive adhesive comprising maleic anhydride taught by Harvey et al. is a notoriously well known pressure sensitive adhesive material for use in articles such as labels, marking films, etc. (e.g. the adhesive sheet inserts taught by Speer et al.) as taught by Harvey et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have printed the indicator layer of Inoue et al. as a printed image on the adhesive layer of Speer et al. in order to utilize the indicator to determine the amount of oxygen that

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permeates through the barrier layer of Speer et al. to the inside of the article as taught by Inoue et al. and to have used the pressure sensitive adhesive comprising maleic anhydride taught by Harvey et al. as the maleic anhydride modified polymer adhesive of Speer et al. since the pressure sensitive adhesive comprising maleic anhydride taught by Harvey et al. is a notoriously well known pressure sensitive adhesive material for use in articles such as labels, marking films, etc. (e.g. the adhesive sheet inserts taught by Speer et al.) as taught by Harvey et al.

In regard to claim 25, Speer et al. teach that the barrier layer is polyvinylidene chloride (PVDC) or ethylene vinyl alcohol copolymer (EVOH) (col. 11, lines 30-31).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. in view of Inoue et al. and in further view of Harvey et al. and in further view of Khalil et al.

Speer et al., Inoue et al. and Harvey et al. teach the patch as discussed above. Speer et al., Inoue et al. and Harvey et al. fail to teach that the luminescent compound comprises at least one material selected from the group consisting of metallo derivatives of octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof. However, Khalil et al. teach that metallo derivatives of partially or fully fluorinated octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof are suitable luminescent molecules for use in the method for measuring oxygen concentration of Khalil et al. (col. 2, lines 46-63). Therefore, one of ordinary skill in the art would have recognized to have used octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof as the luminescent molecule of Speer et al., Inoue et al. and Harvey et al. since Khalil et al. disclose that these molecules are suitable for use for measuring oxygen concentration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof as the luminescent molecule of Speer et al., Inoue et al. and Harvey et al. since Khalil et al. disclose that these molecules are suitable for use for measuring oxygen concentration.

Claims 29-31 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. in view of Inoue et al.

In regard to claims 29 and 33, Speer et al. teach a multilayer film comprising a first layer comprising an oxygen scavenger layer, an oxygen barrier having an oxygen transmission rate of no more than 25 cc oxygen/m²/24hr and a second layer comprising an adhesive where the adhesive is adhered to the first layer (col. 11, lines 4-11 and 50-62 and col. 12, lines 31-35). Speer et al. teach the multilayer film in the form of a non-integral packaging component such as an adhesive sheet insert (i.e. a patch, col. 4, lines 8-14). Speer et al. fail to teach that an oxygen indicator comprising a luminescent compound is disposed on the second layer.

Inoue et al., however, teaches an article comprising both an oxygen indicator and an oxygen scavenger (col. 3, lines 35-41 and col. 4, lines 9-19). The oxygen indicator of Inoue et al. is used to indicate the presence or absence of oxygen based on the color of the indicator (col. 1, lines 15-20 and col. 8, lines 50-64). Inoue et al. teach that the oxygen indicator includes a dyestuff selected from the group consisting of thiazine dyestuffs, indigo dyestuffs and mixtures thereof (col. 1, lines 55-64). Thiazine dyestuffs are luminescent, as evidenced by Miyasaka et al. (enclosed with this Office Action), which discloses that thiazine dyes are suitable light-harvesting dyes (col. 6, lines 23-31), which are defined by Miyasaka et al. as luminescent (col. 4,

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lines 3-4). Inoue et al. teach that the oxygen indicator composition includes an adhesive binder (col. 3, line 48-col. 4, line 3) and is printed on a substrate such as the inside of a transparent film having an oxygen barrier property (col. 4, lines 9-19). Inoue et al. teach that the oxygen indicator is printed on a film (col. 3, lines 35-41), consequently forming an image. Definition 2(b)(2) of the “print” in the attached definition from Merriam-Webster Online Dictionary is “to impress (a pattern or design) on something”. Therefore, it is well known to those of ordinary skill in the art that indicators are often printed onto film substrates in a discontinuous manner/pattern as shown by Inoue et al. in order to make use of the indicator in an economical manner. The print pattern of the indicator is a matter of aesthetics and is a choice of the appearance of the final product; there is no criticality to the issue of patentability in regard to the geometry of the indicator print pattern (image). Therefore, one of ordinary skill in the art would have recognized to have printed the indicator layer of Inoue et al. as a printed image on the adhesive layer of Speer et al. in order to utilize the indicator to determine the amount of oxygen that permeates through the barrier layer of Speer et al. to the inside of the article as taught by Inoue et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have printed the indicator layer of Inoue et al. as a printed image on the adhesive layer of Speer et al. in order to utilize the indicator to determine the amount of oxygen that permeates through the barrier layer of Speer et al. to the inside of the article as taught by Inoue et al.

In further regard to claim 29, the oxygen indicator taught by Inoue et al. is necessarily not coextensive with the second (adhesive) layer of Speer et al. in the instance where the indicator is printed onto the second (adhesive) layer of Speer et al. in a discontinuous manner/pattern in

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order to make use of the indicator in an economical manner or an aesthetical manner as discussed above.

In further regard to claim 33, the patch (the adhesive sheet insert of Speer et al., col. 4, lines 9-14) taught by Speer et al. and Inoue et al. is adapted to be adhered, by means of the adhesive, to a packaging material because Speer et al. teach an adhesive sheet, which necessarily has an outer adhesive layer and which therefore is adapted to be adhered to a packaging material via the adhesive. N.B. It has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. *In re Hutchinson*, 69 USPQ 138.

In regard to claims 30 and 34, Speer et al. teach that the barrier layer is polyvinylidene chloride (PVDC) or ethylene vinyl alcohol (EVOH) (col. 11, lines 30-31).

In regard to claims 31 and 35, hot melt adhesives fall within the scope of the anhydride functional adhesive polyolefins taught by Speer et al. (col. 9, lines 10-24) as evidenced by, e.g., col. 3, lines 62-64 of U.S. 5,912,090 to Nagai et al.

Claims 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. in view of Inoue et al., and in further view of Khalil et al.

Speer et al. and Inoue et al. teach the patch as discussed above. Speer et al. and Inoue et al. fail to teach that the luminescent compound comprises at least one material selected from the group consisting of metallo derivatives of octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof. However, Khalil et al. teach that metallo derivatives of partially or fully fluorinated octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or

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isobacteriochlorins thereof are suitable luminescent molecules for use in the method for measuring oxygen concentration of Khalil et al. (col. 2, lines 46-63). Therefore, one of ordinary skill in the art would have recognized to have used octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof as the luminescent molecule of Speer et al. and Inoue et al. since Khalil et al. disclose that these molecules are suitable for use for measuring oxygen concentration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used octaethylporphyrin, tetraphenylporphyrin, tetrabenzoporphyrin, or the chlorins, bacteriochlorins, or isobacteriochlorins thereof as the luminescent molecule of Speer et al. and Inoue et al. since Khalil et al. disclose that these molecules are suitable for use for measuring oxygen concentration.

(10) Response to Argument

Appellant's arguments regarding the 35 U.S.C. 103 rejection of claims 24 and 25 have been fully considered but are not persuasive.

Appellant argues on page 11 of the Brief that Inoue et al. only "refer to their oxygen indicator as being used in the form of a tablet" or "in the form of a printed paper, non-woven fabric sheet, etc., where the oxygen indicator is sealed *in* a bag". However, Inoue et al. explicitly teach an embodiment where the oxygen indicator is printed on a package bag or container at col. 4, lines 14-19, so Inoue et al. does not teach that the oxygen indicator is only printed on a paper, sheet, "etc., where the oxygen indicator is sealed *in* a bag". In this argument, Appellant omits the teachings of Inoue et al. that the oxygen indicator may be printed on film at col. 3, lines 35-41 and that the oxygen indicator may be printed on a packaging material/film at col. 4, lines 9-19,

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both of which are reasons provided in the rejection of record for why one of ordinary skill in the art would have recognized to have looked to Inoue et al. for a teaching of how to modify the film of Speer et al. Applicant relies upon some examples of Inoue et al. as evidence that Inoue et al. only teaches that the oxygen indicator is printed on a paper, sheet, “etc., where the oxygen indicator is sealed *in* a bag”, but the scope covered by these examples is narrower than the scope of the teachings of Inoue et al. at col. 3, lines 35-41 and col. 4, lines 14-19, so these examples do not define the scope of the teachings of Inoue et al.

Appellant’s argument that “there appears to be no teaching to adhere the oxygen indicator of Inoue et al. to another article” is therefore false per the reasoning of the previous paragraph: Appellant’s “another article” is the packaging material/film onto which Inoue et al. explicitly teaches that the oxygen indicator is printed.

Appellant argues that Inoue et al. does not teach a pressure sensitive adhesive, but the rejection of record does not assert that Inoue et al. teaches a pressure sensitive adhesive. The rejection of record does not rely upon Inoue et al. for a teaching of how one of ordinary skill in the art would have modified the adhesive of Speer et al.

Appellant argues that “maleic anhydride is not maleic anhydride modified polymer adhesive”, but the rejection of record does not propose substituting solely maleic anhydride for the maleic anhydride modified polymer adhesive of Speer et al., but rather substituting the pressure sensitive adhesive of Harvey et al. that comprises maleic anhydride (col. 8, lines 36-49 and 55-59 of Harvey et al.) for the adhesive of Speer et al. (the rejection of record does not assert that maleic anhydride *per se* is maleic anhydride modified polymer adhesive). Speer et al. teach that the adhesive layer may be made of maleic anhydride modified polymers at col. 9, lines 18-

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24. The pressure sensitive adhesive of Harvey et al. is a maleic anhydride modified polymer adhesive because it comprises maleic anhydride. Therefore, not only would one of ordinary skill in the art would have recognized to have used the pressure sensitive adhesive of Harvey et al. as the maleic anhydride modified polymer adhesive of Speer et al. because it is a well known pressure sensitive adhesive for use in article such as labels, marking films, etc. as taught by Harvey et al. and because it is a maleic anhydride modified polymer adhesive, but the pressure sensitive adhesive of Harvey et al. also actually falls within the scope of the teaching of Speer et al. of a maleic anhydride modified polymer adhesive since the pressure sensitive adhesive of Harvey et al. is a maleic anhydride modified polymer adhesive since it comprises maleic anhydride.

On page 12 of the Brief, Appellant points out that an insert (such as the insert taught by Speer et al.) “could typically be expected to be dropped into [] a container”, but there is no requirement in Speer et al. for this to be the case. Patches fall within the scope of the teachings of Speer at col. 4, lines 8-14 because an insert, while it could be inserted loosely into the package (not attached to the package wall), could also be attached to the package wall and still be considered an insert. Furthermore, a patch itself need not be attached to anything to be considered a patch. A patch (for example, having a backing covering the adhesive of the patch) could be inserted into a container, and could therefore be called an insert. The teaching of Speer et al. of an adhesive insert (col. 4, lines 13-14), and of “an integral part of the package wall” or “non-integral packaging component” (depending on whether or not one would consider a patch adhered to a container wall as integral or non-integral with the container wall, col. 4, lines 8-13)

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further supports the inclusion of a patch that actually is adhered to the wall of the container, although Appellant's claims do not require that the patch be adhered to a wall of a container.

On page 12 of the Brief, Appellant asserts that "Speer et al. teaches a maleic anhydride modified *polymer*", apparently arguing that Speer et al. do not teach a maleic anhydride modified adhesive, but Speer et al. explicitly teach that the maleic anhydride modified polymers are adhesives (Speer explicitly teaches maleic anhydride modified polymers as suitable adhesives, col. 9, lines 18-24). The maleic anhydride modified polymer of Harvey et al. functions as a pressure sensitive adhesive because it is a pressure sensitive adhesive. The pressure sensitive adhesive of Harvey et al. is a maleic anhydride modified polymer because it comprises maleic anhydride.

Appellant's arguments regarding the 35 U.S.C. 103 rejection of claim 27 have been fully considered but are not persuasive. Appellant's arguments depend entirely upon Appellant's arguments regarding the 35 U.S.C. 103 rejection of claim 24 which have been addressed above.

Appellant's arguments regarding the 35 U.S.C. 103 rejection of claims 29-31 and 33-35 have been fully considered but are not persuasive.

In regard to claim 29, Appellant argues on pages 13-14 of the Brief that it is unclear what is being relied upon in each of the references in regard to the recitation "wherein the oxygen indicator is not coextensive with the second layer comprising the adhesive". It is stated in paragraph 10 of the Office Action mailed February 3, 2005 at pages 7-8 that

[t]he oxygen indicator taught by Inoue et al. is necessarily not coextensive with the second (adhesive) layer of Speer et al. in the instance where the indicator is printed onto the second (adhesive) layer of Speer et al. in a discontinuous manner/pattern in order to make use of the indicator in an economical manner or an aesthetical manner as discussed above.

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As stated in paragraph 10 of the Office Action mailed February 3, 2005, Inoue et al. teach that the oxygen indicator may be printed on a film/packaging material at col. 3, lines 35-41 and col. 4, lines 9-19. Definition 2(b)(2) of the “print” in the attached definition from Merriam-Webster Online Dictionary is “to impress (a pattern or design) on something”. Any time something is printed on a substrate, that something forms an image. Likewise, any pattern printed on a film forms an image. Since Inoue et al. teach that the oxygen indicator may be printed on a film/packaging material, Inoue et al. is therefore relied upon for a teaching of the printed image, which, by definition, may have a pattern. In the instances where there is a pattern, there necessarily are discontinuities in the printed image and the oxygen indicator is therefore not coextensive with the second layer comprising the adhesive. Examiner notes that the image is not defined in the specification, and no criticality of the image to the invention is discussed in the specification.

Appellant discusses the adhesive binder of Inoue et al. on pages 13-14 of the Brief, but this is not relevant to the rejection of record since the rejection of record does not rely upon Inoue et al. for a teaching of how one of ordinary skill in the art would have modified the adhesive of Speer et al. or for a teaching of how the oxygen indicator is not coextensive with the second layer comprising the adhesive in the patch taught by Speer et al. and Inoue et al. The Office states that the adhesive layer of Speer et al. corresponds to the claimed second layer comprising an adhesive of claim 29, not that the adhesive binder of Inoue et al. corresponds to the claimed second layer comprising an adhesive of claim 29.

In regard to claim 33, Appellant argues on page 14 of the Brief that Speer et al. “offers no guidance as to the type of adhesive contemplated”, but claim 33 does not require any particular type of adhesive.

On page 14 of the Brief, Appellant points out that an insert (such as the insert taught by Speer et al.) “could typically be expected to be dropped into [] a container”, but there is no requirement in Speer et al. for this to be the case. Patches fall within the scope of the teachings of Speer at col. 4, lines 8-14 because an insert, while it could be inserted loosely into the package (not attached to the package wall), could also be attached to the package wall and still be considered an insert. A patch itself need not be attached to anything to be considered a patch. A patch (for example, having a backing covering the adhesive of the patch) could be inserted into a container, and could therefore be called an insert.

Furthermore, claim 33 does not require that the patch be adhered to the packaging material, but that it is adapted to be adhered to the packaging material by means of the adhesive. Regardless, the teaching of Speer et al. of an adhesive insert (col. 4, lines 13-14), and of “an integral part of the package wall” or “non-integral packaging component” (depending on whether or not one would consider a patch adhered to a container wall as integral or non-integral with the container wall, col. 4, lines 8-13) further supports the inclusion of a patch that actually is adhered to the wall of the container via the adhesive of the insert, even though claim 33 does not require that the patch be adhered to a wall of a container.

Appellant argues on page 15 of the Brief that Inoue et al. do not disclose a patch. This is correct, but the proposed combination of Speer et al. and Inoue et al. results in an insert, which as made of record in the Office Action mailed February 3, 2005 and as reiterated in this Response

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to Argument section of this Examiner's Answer, corresponds to a patch. The structure taught by Speer et al. is modified in the rejection of record according to the teachings of Inoue et al.: the structure of Inoue et al. is not modified according to the teachings of Speer et al. Speer et al. teaches an insert (which corresponds to a patch), so Inoue et al. need not suggest a patch as Appellant urges is required.

Appellant argues that Inoue et al. teaches only a tablet or "printed substrate" that is "inserted *in* a bag", not attached to a packaging material. However, Inoue et al. explicitly teach an embodiment where the oxygen indicator is printed on a package bag or container at col. 4, lines 14-19, so Inoue et al. does not teach that the oxygen indicator is only printed on a substrate where the substrate is "inserted *in* a bag". In this argument, Appellant omits the teachings of Inoue et al. that the oxygen indicator may be printed on film at col. 3, lines 35-41 and that the oxygen indicator may be printed on a packaging material/film at col. 4, lines 9-19, both of which are reasons provided in the rejection of record for why one of ordinary skill in the art would have recognized to have looked to Inoue et al. for a teaching of how to modify the film of Speer et al. Applicant relies upon some examples of Inoue et al. as evidence that Inoue et al. only teaches that the oxygen indicator is printed on a substrate where the substrate is "inserted *in* a bag", but the scope covered by these examples is narrower than the scope of the teachings of Inoue et al. at col. 3, lines 35-41 and col. 4, lines 14-19, so these examples do not define the scope of the teachings of Inoue et al.

Appellant discusses the adhesive binder of Inoue et al. on page 15 of the Brief, but this is not relevant to the rejection of record since the rejection of record does not rely upon Inoue et al.

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for a teaching of how one of ordinary skill in the art would have modified the adhesive of Speer et al.

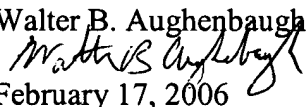
Appellant argues that the Inuoe et al. does not “suggest[] adapting their oxygen indicator to be adhered to a packaging material via an adhesive”, but claim 33 does not recite that the indicator is adapted to be adhered to a packaging material via an adhesive, but that the patch is adapted to be adhered to a packaging material via an adhesive. No adaptation of the indicator is required by claim 33.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Walter B. Aughenbaugh

February 17, 2006


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 2/17/06

Conferees:

Carol Chaney 

Harold Pyon 